

APPENDIX A

**STATE OF LOUISIANA
DIVISION OF ADMINISTRATIVE LAW**

**IN THE MATTER OF: MICHAEL LEDET
DOCKET NO. 2015-10612-PS-SXOR**

DEPT. OF PUBLIC SAFETY AND CORRECTIONS
AGENCY TRACKING NO. 2530602

DECISION AND ORDER

Michael Ledet appeals the Department of Public Safety and Corrections' Tier II classification of his sex offender registration requiring him to register for twenty-five years in accordance with in accordance with the Louisiana Registration of Sex Offenders, Sexually Violent Predators and Child Predators Law. The Department of Public Safety and Corrections' Tier II classification is **affirmed**.

APPEARANCES

A hearing was conducted October 14, 2015, in Baton Rouge, Louisiana, before Administrative Law Judge William H. Cooper III. Present at the hearing were Michael Ledet (Respondent), with his counsel of record Robert A. Aguiluz and Jude Bursavich; Adrienne Aucoin, counsel of record for the Department of Public Safety and Corrections (Department); and Emily Bishop and Kim Brimage, criminal records analysts with the Department's

Louisiana Bureau of Criminal Identification and Information (“Bureau”).

STATEMENT OF THE CASE

This adjudication is conducted in accordance with the Division of Administrative Law Act, La. R.S. 49:991, *et seq.*, the Administrative Procedure Act, La. R.S. 49:950, *et seq.*, and the Louisiana Registration of Sex Offenders, Sexually Violent Predators and Child Predators Law, La. R.S. 15:540, *et seq.* Respondent requested a hearing to challenge the Department’s Tier II registration classification under La. R.S. 15:544(B)(1).

The scope of the hearing involves consideration of the issues in La. R.S. 15:540, *et seq.*, and La. R.S. 15:542.1.3(B)(4), which gives Respondent the ability to appeal the Department’s determination of the applicable time period of registration and frequency of in-person periodic renewals through an administrative hearing.

The Department and Respondent stipulated to the introduction of the Department’s exhibits D1 through D6 that were accepted into evidence. Respondent introduced exhibits R1 through R13 *in globo* that were accepted into evidence. The Department and Respondent moved to mark as confidential R1, the six pages of the Department’s investigative notes. Their request is granted, and R1 is marked “confidential.” The Department introduced the testimony of Ms. Bishop and Ms. Brimage. Respondent testified. The Department requested the undersigned to take official notice of the National Guidelines for Sex Offender Registration and Notification at 73 Federal Registry No. 128, with no

objection from counsel for Respondent. Both parties presented argument. The undersigned requested post-hearing briefs from both parties, and agreed to hold the record open until November 4, 2015, at 5:00 p.m. On October 22, 2015, Respondent filed a Motion to Supplement the Administrative Record and attached four supplemental exhibits labeled Supplemental Exhibit 1-4 totaling nine pages. Respondent's four supplemental exhibits were accepted into evidence. Both parties timely filed post-hearing briefs. The undersigned closed the record at the designated time and took the matter under advisement.

FINDINGS OF FACT

Respondent pled guilty to one count of a violation of Possession of Material Involving the Sexual Exploitation of Minors, a violation of 18 U.S.C. §2252(a)(4)(B), in the United States Court for the Eastern District of Louisiana on April 27, 2005, under Bill of Information #05-87.¹ On July 28, 2005, he was sentenced to the custody of the United States Bureau of Prisons for a period of 24 months, and upon his release to be supervised for a period of six years.² Respondent pled guilty to possessing a computer hard drive which contained visual depictions that were mailed, shipped, and transported in interstate and foreign commerce, and which were produced using materials which had been mailed, shipped, and transported in interstate and foreign commerce, by

¹ D1 and D2.

² D2.

any means including by computer, the production of which involved the use of a minor engaging in sexually explicit conduct, as defined in Title 18, United States Code, Section 2256(2), and such visual depictions were of such conduct.³

After his release from Oakdale federal prison, Respondent registered on June 12, 2007, as a sex offender with the St. Tammany Parish Sheriff's Office, the parish of his residence.⁴ The St. Tammany Parish Sheriff's Office noted his United States conviction required him to register as a sex offender for a period of ten years. The St. Tammany Parish Sheriff's Office incorrectly listed Respondent's primary offense as a Louisiana conviction for a violation of La. R.S. 14:81.1, pornography involving juveniles, on the State Sex Offender and Child Predator Registry ("Registry") on June 9, 2009.⁵ Because of this improper listing by the St. Tammany Parish Sheriff's Office in the Registry database as Respondent having an in-state conviction rather than an out-of state conviction, the Bureau was not notified at that time that Respondent had a federal conviction in need of tier classification.

On June 9, 2010, Respondent was notified by the St. Tammany Parish Sheriff's Office that he would be required to register as a sex offender for a period of fifteen years.

On June 6, 2014, Deputy Denise Porter of the St. Tammany Parish Sheriff's Office met with

³ D1.

⁴ R13, Sex offender registry letter on letterhead of St. Tammany Parish Sheriff Rodney J. Strain Jr. dated June 12, 2007.

⁵ R13, page 3 of 6.

Respondent when he came in to update his annual registration. She believed Respondent's Tier I classification was incorrect and should be a Tier II, and for the first time since he registered in 2007, informed Respondent to provide a copy of his court minutes and bill of information.⁶ Respondent complied after consulting his attorney.

On June 10, 2014, Deputy Porter emailed Mrs. Marie Campbell, a criminal analyst supervisor at the Bureau, as to Respondent's Tier classification. Mrs. Campbell responded that St. Tammany had selected Tier I classification at the time of his 2008 registration, and that Deputy Porter could change the tier classification.⁷

On June 11, 2014, Deputy Porter of the St. Tammany Parish Sheriff's Office changed Respondent's Tier classification from Tier I to Tier II.⁸ Respondent was notified of the change, and he notified the sheriff's office he was contemplating legal action.

On August 4, 2014, Ms. Bishop emailed Ms. Brimage concerning Respondent's Tier classification.⁹ Ms. Brimage was waiting on certified copies of Respondent's conviction.¹⁰ Ms. Brimage changed the tier classification from Tier II to "Not Yet Assigned."¹¹ On August 7, 2014, Ms. Brimage completed her assessment and changed Respondent's tier

⁶ R1, page 3.

⁷ R2.

⁸ R1, page 3.

⁹ R3.

¹⁰ R3.

¹¹ R1, page 2.

classification from “Not Yet Assigned” to Tier II.¹² The Department re-classified Respondent’s United States conviction as most comparable to Pornography involving Juveniles, a violation of La. R.S. 14:81.1, a Tier II offense, and notified Respondent by letter dated August 7, 2014.¹³

CONCLUSIONS OF LAW

La. R.S. 15:542.1.3 tasks the Bureau with comparing the elements of an out-of-state offense of conviction with the elements of the most comparable Louisiana offense in determining the time period or Tier of registration under La. R.S. 15:544 and the frequency of in-person periodic renewals under the provisions of La. R.S. 15:542.1 applicable to an offender residing in Louisiana. The tier classification system was not created for the sex offender registry until January 1, 2008.¹⁴ Prior to that time, Respondent would have been required to register for a maximum period of ten years.¹⁵ The Bureau has a duty to make such a determination within sixty days of receiving certified copies of court records from the offender as required by La. R.S. 15:542.1.3(A). The Bureau is then required to post its determination on the Registry within ninety days of receiving the certified copies of court records.

The supplemental exhibits filed by Respondent suggest that a Bureau employee was aware of

¹² R1, page 2.

¹³ D6.

¹⁴ See 2007 Acts of Louisiana Legislature, No. 460.

¹⁵ See 2007 Acts of Louisiana Legislature, No. 460.

Respondent's federal conviction and his plans on residing in St. Tammany Parish as early as May 3, 2007. Another supplemental exhibit suggests the Department Registry received a *Prisoner Release Notification* form from the U.S. Federal Bureau of Prisons on February 28, 2007, giving a detailed description of Respondent's conviction as a sex offense. These supplemental exhibits are not given weight, as their origin or authenticity was not established through any testimony.¹⁶ Respondent was released from prison after serving his 24-month sentence on or about June 12, 2007, and registered with the St. Tammany Parish Sheriff's Office on that same date. However, there is no evidence the Bureau ever received any of Respondent's certified copies of his conviction, or made any determination of the tier classification *prior* to the Bureau's notification letter to Respondent dated August 7, 2014. Respondent admitted that the first time he was asked for his copies of his conviction was on June 6, 2014, by Deputy Porter. The St. Tammany Parish Sheriff's Office made an error when registering Respondent on the Registry in 2009, when it listed Respondent's conviction as a Louisiana offense and violation of La. R.S. 14:81.1. Respondent did not supply the Bureau with certified copies of the court records of Respondent's conviction as required under La. R.S.

¹⁶ Counsel for Respondent in his *Motion to Supplement the Administrative Record* states he "has recently been made aware of the documents attached to this motion as exhibits..." without explaining the exhibits' origins. He does state in his motion the exhibits were not produced by the Department in response to his discovery.

15:542.1.3(A) until at the earliest in June of 2014, assuming Deputy Porter forwarded the documents to the Bureau that she received from Respondent.¹⁷

Counsel for Respondent argued that the Department's posting of Respondent's conviction as a Tier I on the Registry in 2009 procedurally estopped it from making any changes, as that determination became final after one year according to La. R.S. 15:542.1.3(B)(4). Counsel for Respondent argued that the posting in 2009 became final one year later.¹⁸ He also argued that the Tier I classification in 2009 must have been final, as Respondent was never required to register every three months until a determination was made, as specified by La. R.S. 15:542.1.3(B)(2)(b). Counsel for Respondent's arguments are unpersuasive. The Bureau itself never made a determination of the tier classification of Respondent's conviction until August of 2014. While the Department allowed sheriffs' offices access to the Registry to upload information on an offender's conviction, the St. Tammany Parish Sheriff's Office erred on June 9, 2009, by classifying Respondent's conviction as an in-state, Louisiana offense, and

¹⁷ Even Respondent's supplemental exhibits would not prove the Bureau received his certified court records, or made a determination of his tier classification prior to August 7, 2014.

¹⁸ Although counsel for Respondent argued the Department's responses to his discovery admitted this first posting on the Registry occurred on August 20, 2009, neither party during the hearing offered into evidence any discovery responses which would have established this date. While evidence was introduced in the hearing that Respondent was first registered on the Registry in June of 2009, the actual date of the 2009 posting is moot as discussed in the conclusion above.

listing it as a violation of La. R.S. 14:81.1, instead of listing it as a federal offense and a violation of 18 U.S.C. §2252(a)(4)(B). This error prevented the Bureau from discovering Respondent in its computer database protocols designed to detect out-of-state offenders that have not been classified. As the Bureau is the only agency tasked with classifying out-of-state offenders according to La. R.S. 15:542.1.3(B)(4), it cannot be estopped from making that determination when a sheriff's office, that is not legislatively authorized to do so, incorrectly lists a federal violation as a Louisiana violation on the database. The Bureau did not receive any certified copies of Respondent's conviction that would have triggered its tier classification. The incorrect classification by the St. Tammany Parish Sheriff's Office of Respondent's federal conviction as a state conviction failed to trigger the temporary three month registration requirement under La. R.S. 15:542.1.3(B)(2)(b) until a determination was made by the Bureau. Respondent never provided any copies of his conviction to the Bureau, as required by La. R.S. 15:542.1.3(A), or the St. Tammany Parish Sheriff's Office until he was asked to do so by Deputy Porter in June of 2014. The 2009 tier classification of Respondent's conviction as Tier I, a result of the St. Tammany Parish Sheriff's Office's error, was invalid and did not become a final determination under La. R.S. 15:542.1.3(B)(4).

Counsel for Respondent argued the Department's classification was substantively in error because the two statutes are not equivalent in their elements. La. R.S. 15:541(25) defines "sexual offense against a victim who is a minor" means a conviction for the perpetration or attempted perpetration of, or

conspiracy to commit, any of the following: (d) Pornography involving juveniles (R.S. 14:81.1); (n) Any conviction for an offense under the laws of another state, or military, territorial, foreign, tribal, or federal law which is ***equivalent*** to the offenses listed in Subparagraphs (a) through (m) of this Paragraph.¹⁹ Counsel for Respondent argued that because the age element of the offense of Respondent's federal conviction (under 18 years of age) are not equivalent with the age element of the minor victim to that of La. R.S. 14:81.1 (under 17 years of age), then the Department erred in classifying Respondent's conviction as ***comparable*** to La. R.S. 14:81.1. Counsel for Respondent also argued that Respondent's federal offense of conviction has an element the images are computer generated, but the Louisiana statute does not have that language as an equivalent element. He argued that because the age element and computer generated element of his federal conviction are not equivalent elements as required by La. R.S. 15:541(20.1) and La. R.S. 15:541(25)(n), the Tier II classification cannot be maintained. This argument is unpersuasive.

La. R.S. 15:541(20.1) defines an "(o)ut-of-state offender" as any offender convicted or adjudicated in any court system, other than a court in this state, of any offense having elements ***equivalent*** to a "sex offense" or a "criminal offense against a victim who is a minor", as defined in this Section.²⁰ The term "out-of-state offender" is used only in La. R.S. 15:542.1.5(E)

¹⁹ Emphasis in bold italics supplied.

²⁰ Emphasis in bold italics supplied.

and designates the Bureau as the state agency to receive information regarding “out-of-state sex offenders and child predators who establish a residence in this state pursuant to [R.S. 15:542.1.3.](#)” La. R.S. 15:541(20.2) defines an “(o)ut-of-state offense” as any offense, defined by the laws of any jurisdiction other than the state of Louisiana, the elements of which are ***comparable*** to a Louisiana “sex offense” or “criminal offense against a victim who is a minor”, as defined in this Section.²¹

La. R.S. 14:81.1(B)(8) defines pornography involving juveniles as any photograph, videotape, film, or other reproduction of any sexual performance involving a child **under the age of seventeen years**. 18 U.S.C.A. §2256(1) defines a “minor” as any person **under the age of eighteen years**, and 18 U.S.C.A. §2256(8) defines “child pornography” as any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct.

There is no evidence in the record as to the age of the minor sufficient to meet the age element of La. R.S. 14:81.1. Ms. Brimage testified she considered the term “minor” as one of the elements in comparing the statute with Respondent’s statute of conviction, and noted there was no age of victim or victim information indicated in the certified documents provided to her.²² Without a specific age alleged for the victim in

²¹ Emphasis in bold italics supplied.

²² R6, Tier Classification Summary Sheet.

Respondent's bill of information, the elements of the offense of which Respondent was convicted cannot be *exactly* compared to the elements of La. R.S. 14:81.1. Respondent's federal offense of conviction defines a minor as a person less than eighteen years of age. La. R.S. 14:81.1(1) defines a juvenile as a child under the age of seventeen. The elements of the two offenses are not exact; it is theoretical that possession of material depicting sexual activity of a seventeen-year-old victim could have been what Respondent was convicted of, but it would not be a violation under La. R.S. 14:81.1. However, the record has no evidence as to the age of the persons depicted in the images Respondent was convicted of possessing, other than the statute's definition of a minor as a person under the age of eighteen years of age. Nor was there any evidence that Respondent possessed a computer-generated image, despite counsel for Respondent's argument this element was not comparable to the elements in La. R.S. 14:81.1. It is important to note that it is the *elements* of the offense of conviction the Department must compare to the most comparable Louisiana offense under La. R.S. 15:542.1.3(B)(2)(a), and not the facts.

La. R.S. 15:542.1.3(B)(2)(a) requires the Bureau determine an out-of-state or federal offender's time period of registration and frequency of in-person periodic renewals. This determination "shall be based on a comparison of the elements of the offense of conviction or adjudication with the elements of the most comparable Louisiana offense." The Bureau is not required to find a Louisiana statute with elements *equivalent* to Respondent's federal conviction. It

must identify a statute “***most comparable***.”²³

The Louisiana Supreme Court ruled in *Bowers v. Firefighters’ Retirement System* that the scope of review of administrative agencies in the performance of a discretionary duty is restricted to a determination of whether the agency’s action can be deemed to have been unreasonable, arbitrary or capricious, or whether it amounted to an abuse of power.²⁴

In *Nolan v. State*, the First Circuit ruled that the Bureau acted properly in comparing an Ohio child pornography-related statute, Ohio-R.C. § 2907.323(A)(3), illegal use of a minor in nudity-oriented material or performance, with the Louisiana statute of pornography involving juveniles, La. R.S. 14:81.1.²⁵ The elements of the Ohio crime, Ohio-R.C. §2907.323(A)(3), include “possess or view any material or performance that shows a minor who is not the person’s child or ward in a state of nudity...” In Ohio, a minor is defined in the criminal statutes by Ohio-R.C. § 2907.01(M) as a person ***under the age of eighteen***. Nolan argued that the Department improperly classified him as a Tier II offender based upon his Ohio conviction. The First Circuit concluded the Department’s determination Respondent was a Tier II sex offender was neither manifestly erroneous nor arbitrary or capricious. “Because the comparable sexual offense in Louisiana ***equated*** to possession of

²³ Emphasis in bold italics supplied.

²⁴ 2008-1268 (La. 3/17/2009), 6 So. 3d 173, at 176.

²⁵ 2013-2140 (La. App. 1 Cir. 6/6/14) , 148 So. 3d 198, *rehearing denied* (July 22, 2014); *writ denied*, 2014-1795 (La. 11/14/14), 152 So. 3d 881; *reconsideration not considered*, 2014-1795 (La. 1/16/15), 157 So. 3d 1115.

pornography involving minors, Mr. Nolan is required to register for 25 years.”²⁶ In Ohio, a minor is under eighteen years of age, just as the federal statutes define a minor under 18 U.S.C.A. §2256(1). The undersigned concludes the decision in *Nolan* persuasive, and that the Department’s classification of Respondent’s conviction under 18 U.S.C. §2252(a)(4)(B) as most comparable to La. R.S. 14:81.1, and posting him as a Tier II offender on the State Sex Offender and Child Predator Registry, was not unreasonable, arbitrary or capricious, or an abuse of power.

Counsel for Respondent argued that under the federal guidelines for the federal Sex Offender Registration and Notification Act (SORNA), possession of child pornography is a Tier I offense.²⁷ He argued that Louisiana is required to follow the federal guidelines in developing and maintaining the state Registry under La. R.S. 15:542.1.5(A)(1), and that Respondent’s conviction should be classified as a Tier I offense. This argument is unpersuasive. SORNA does not prevent a state from implementing stricter statutes or regulations on sex offenders.²⁸

ORDER

IT IS ORDERED that the Department of Public Safety and Corrections’ Tier II classification for Michael Ledet on the State Sex Offender and Child Predator Registry for his conviction of a violation of 18

²⁶ *Nolan, supra* at 148 So. 3d 205. Emphasis in bold and italics supplied.

²⁷ 42 U.S.C.A. §16901, *et seq.*; R8.

²⁸ National Guidelines for Sex Offender Registration and Notification, 73 Fed. Reg. No. 128, § 38034 (July 2, 2008).

U.S.C. §2252(a)(4)(B), Possession of Material Involving the Sexual Exploitation of Minors, in the United States Court for the Eastern District of Louisiana on April 27, 2005, under Bill of Information #05-87, is **AFFIRMED**.

Rendered and signed on December 3, 2015, in
Baton Rouge, Louisiana.

s/

William H. Cooper III
Administrative Law Judge

APPENDIX B

STATE OF LOUISIANA
DIVISION OF ADMINISTRATIVE LAW

IN THE MATTER OF: MICHAEL LEDET
DOCKET NO. 2015-10612-PS-SXOR

DEPT. OF PUBLIC SAFETY AND CORRECTIONS
AGENCY TRACKING NO. 2530602

ORDER UPON RECONSIDERATION

On December 14, 2015, Michael Ledet (Petitioner) timely filed a *Petition for Reconsideration* following the decision issued December 4, 2015, affirming the Department of Public Safety and Corrections (Department) Tier II classification. The undersigned grants Petitioner's request and reconsiders its original decision. Upon reconsideration, the Department's Tier II classification is **affirmed**.

Petitioner argued that the undersigned improperly used the language of La. R.S. 15:542.1.3(A) to his detriment, as that statute with the provision requiring the offender provide certified copies of his conviction upon registration were not in effect until after Petitioner was released from prison and registered with the state of Louisiana.

Petitioner's argument on this point is correct, and the undersigned reconsiders that the requirement was not in effect at the time Petitioner first registered

with the state of Louisiana. This does not, however, change the undersigned's conclusion that the Department did not classify Respondent's federal conviction until August of 2014. The St. Tammany Parish Sheriff's Office's erroneous classification of Respondent's conviction as an in-state, Louisiana offense, and listing it as a violation of La. R.S. 14:81.1, instead of listing it as a federal offense and a violation of 18 U.S.C. §2252(a)(4)(B), did not estop the Department from making a proper classification five years later.

Petitioner alleged the undersigned's conclusion, that the Department did not make the classification in 2009, is unsupported by the evidence and testimony. However, this information was offered by Petitioner and accepted into evidence as R13 consisting of 72 pages. The *State of Louisiana Sex Offender Registration Form* contained in R13 was completed by Deputy Spell of the St. Tammany Parish Sheriff's Office and printed on June 9, 2009. The agency name completing the form is found on page 1 of 6 under the "Agency Information" section. The incorrect classification by the deputy of Petitioner's offense as a Louisiana offense of La. R.S. 14:81.1, Pornography Involving Juveniles, can be found on page 3 of 6 of that form under the "Offenses" section. Deputy Spell signed the form on page 6 of the form as the notification officer. Petitioner initialed the bottom of each page of the form, including page 3, attesting that the information he provided and listed on the form above his initials as accurate, and also signed page 6 next to Deputy Spell. It is clear the St. Tammany Parish Sheriff's Office, and not the Department, made the incorrect classification in 2009.

Petitioner's other arguments contained in the request for reconsideration were fully considered and all lacked merit.

Petitioner did not address the holding of the First Circuit in *Nolan v. State*.¹ The undersigned still concludes this case supports the Department's classification of Petitioner's federal conviction as a Tier II offense under Louisiana law, and that conclusion is **affirmed**.

IT IS ORDERED that the Department of Public Safety and Corrections' Tier II classification for Michael Ledet on the State Sex Offender and Child Predator Registry for his conviction of a violation of 18 U.S.C. §2252(a)(4)(B), Possession of Material Involving the Sexual Exploitation of Minors, in the United States Court for the Eastern District of Louisiana on April 27, 2005, under Bill of Information #05-87, is **AFFIRMED**.

Rendered and signed on January 8, 2016, in Baton Rouge, Louisiana.

s/

William H. Cooper III
Administrative Law Judge

¹ 2013-2140 (La. App. 1 Cir. 6/6/14), 148 So. 3d 198, *rehearing denied* (July 22, 2014); *writ denied*, 2014-1795 (La. 11/14/14), 152 So. 3d 881; *reconsideration not considered*, 2014-1795 (La. 1/16/15), 157 So. 3d 1115.

APPENDIX C

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2017 CA 1457

MICHAEL LEDET

VERSUS

**LOUISIANA DEPARTMENT OF
PUBLIC SAFETY AND CORRECTIONS**

**On Appeal from the
19th Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana**

Trial Court No. 645,873

**BEFORE: WHIPPLE, C.J., McCLENDON, AND
HIGGINBOTHAM, JJ**

HIGGENBOTHAM, J

Michael Ledet appeals his classification as a Tier II sex offender based on his 2005 federal conviction and incarceration for possession of materials involving the sexual exploitation of minors, in violation of 18 USCA 2252. The district court upheld an administrative law judge's (ALJ) determination that the State of Louisiana, through the Department of Public Safety and Corrections, Public Services, Office of State Police, Bureau of Criminal Identification and Information ("the Bureau"), properly classified Mr. Ledet in 2014 pursuant to the most comparable state statute, La. R.S. 14:81.1, concerning possession of pornography involving juveniles. Consequently, Mr. Ledet is currently required to register in Louisiana as a sex offender for a period of 25 years from the date of his initial registration, as well as perform in-person renewals every six months, all in accordance with La. R.S. 15:540, *et seq.*¹

¹ Louisiana Revised Statute 15:542.1.3 is entitled, in part: "Procedures for offenders convicted or adjudicated under ... federal law;" and La. R.S. 15:544 is entitled "Duration of registration and notification period." Read together, any Louisiana resident convicted under federal law of a comparable sexual offense in Louisiana against a victim who is a minor shall register for a period of 25 years, as a Tier II sex offender.

BACKGROUND

On March 23, 2005, Mr. Ledet was charged by a federal bill of information with one count of possession of child pornography. He pled guilty to the charge and was sentenced on July 28, 2005, to serve two years in federal prison. Upon his supervised release from prison, Mr. Ledet resided in Mandeville, Louisiana. As a required condition of his supervised release, Mr. Ledet initially registered as a sex offender on June 12, 2007, with the Sheriffs Office for St. Tammany Parish. He was informed at that time that he must renew his registration annually for ten years from the date of his initial registration. The Sheriff's Office forwarded Mr. Ledet's registration to the Bureau. For the next seven years, Mr. Ledet annually updated his registration as required.

On August 7, 2014, the Bureau sent written notification to Mr. Ledet that his period of registration and frequency of his in-person periodic renewals had been reviewed and it was determined, by comparing the elements of the most comparable Louisiana statute (pornography involving juveniles) with the criminal elements of the federal statute (sexual exploitation of minors), that Mr. Ledet should be classified as a Tier II offender. A Tier II classification involves offenses defined in La. R.S. 15:541(25) as "Sexual

offense[s] against a victim who is a minor" and require a 25- year registration period, as well as an in-person registration renewal every six months from the date of the initial registration. See La. R.S. 15:544 and La. R.S. 15:542.1.l(A)(2). Additionally, Mr. Ledet was informed of his right to appeal the Tier II classification by submitting a written request for an administrative hearing as provided in the Louisiana Administrative Procedure Act ("the APA"), La. R.S. 49:950, *et seq.*, within one year from the date that the Bureau posted its determination on the Sex Offender and Child Predator Registry ("the Registry"). The Bureau's determination was posted on the Registry on August 7, 2014.

Almost a full year later, Mr. Ledet submitted a formal appeal of the Bureau's Tier II determination and requested an administrative hearing by letter dated August 4, 2015. On October 14, 2015, a hearing was held on the merits of Mr. Ledet's Tier II classification and, after argument, witness testimony, admission of evidence, and the submission of post-hearing briefs, a Decision and Order was rendered and signed by an ALJ on December 3, 2015. In detailed written reasons, the ALJ affirmed the Bureau's determination. After the ALJ denied Mr. Ledet's request for reconsideration, Mr. Ledet filed a petition for judicial review of the ALJ's decision in the Nineteenth Judicial District Court on February 11, 2016. The district court reviewed the administrative record and the parties' memoranda, as well as heard oral arguments on May 23, 2017. On March 28, 2018,

the district court signed an amended judgment denying Mr. Ledet's petition and rendering judgment in favor of the Bureau, thereby affirming the ALJ decision and finding that the ALJ's decision was not arbitrary and capricious. Mr. Ledet now appeals to this court for review of the district court and the ALJ's decisions.²

STANDARD OF REVIEW

A district court's judicial review of a final administrative decision is governed by the APA and its standard of review as set forth in La. **R.S.** 49:964(G):

The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences,

² Pursuant to a Rule to Show Cause Order issued by this court on October 19, 2017, the parties filed a joint motion to remand the matter to the district court for the limited purpose of allowing the district court to sign an amended judgment containing appropriate decretal language. After the appellate court record was supplemented with the amended judgment, a different panel of this court voted to maintain Mr. Ledet's appeal while reserving a final determination to this merits panel. We have examined the amended judgment and agree to maintain Mr. Ledet's appeal.

conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (6) Not supported and sustainable by a preponderance of evidence as determined by the reviewing court. In the application of this rule, the court shall make its own determination and conclusions of fact by a preponderance of evidence based upon its own evaluation of the record reviewed in its entirety upon judicial review. In the application of the rule, where the agency has the opportunity to judge the credibility of witnesses by first-hand observation of demeanor on the witness stand and the reviewing court does not, due regard shall be given to the agency's determination of credibility issues.

When reviewing a final administrative decision, the district court functions as an appellate court, confining its review to the administrative record. Any one of the six bases listed in the statute is sufficient to modify or reverse the administrative

determination. See La. R.S. 49:964(F). See also *Nolan v. State*, 2013-2140 (La. App. 1st Cir. 6/6/14), 148 So.3d 198,202, writ denied, 2014-1795 (La. 11/14/14), 152 So.3d 881.

The manifest error test is used in reviewing the facts as found by the ALJ, but the arbitrary and capricious test is used in reviewing the ALJ's conclusions and its exercise of discretion. *Nolan*, 148 So.3d at 202. On legal issues, the reviewing court gives no special weight to the findings of the ALJ, but conducts a *de nova* review of questions of law and renders judgment on the record. *Id.* Once a final judgment is rendered by the district court, an aggrieved party may seek review of that judgment by appeal to the appropriate appellate court. *Id.* See also La. R.S. 49:965. The appellate court owes no deference to either the factual findings or legal conclusions of the district court when conducting its judicial review over the administrative action. Consequently, this court will conduct its own independent review of the record and apply the standards provided by the APA, La. R.S. 49:964(G). *Id.*

LAW AND ANALYSIS

Louisiana maintains a comprehensive statutory scheme governing sex offender registry within the state. See La. R.S. 15:540, *et seq.* Louisiana Revised Statute 15:544(B)(l) is the general provision addressing the duration of an offender's registration requirement when the

offender has been convicted of a sexual offense against a victim who is a minor as defined in La. R.S. 15:541, and requires the offender to maintain registration for a period of 25 years from the date of initial registration in Louisiana. Pursuant to La. R.S. 15:541(25)(d) a "[s]exual offense against a victim who is a minor" includes pornography involving juveniles, a violation of La. R.S. 14:81.1(B)(8), which is defined as "any photograph, videotape, file, or other reproduction, whether electronic or otherwise, of any sexual performance involving a child under the age of seventeen." Further, once a sex offender establishes a residence in Louisiana, La. R.S. 15:542.1.3(A) requires that the offender provide the Bureau certain information pertaining to the offense of conviction. The Bureau then determines the offender's period of registration and the frequency of in-person periodic renewals by analogizing the offender's out-of- state offense of conviction to the "most comparable Louisiana offense." La. R.S. 15:542.1.3(B)(2)(a).

Initially, we reject Mr. Ledet's argument that the ALJ erroneously conducted the administrative hearing as a judicial review. The transcript of the administrative hearing clearly reflects that the ALJ conducted the hearing as a trial on the merits concerning Mr. Ledet's assertions that his Tier II sex-offender classification was improperly determined by the Bureau several years after he had already been classified. Counsel for both Mr. Ledet and the Bureau made opening and closing statements, evidence was presented by both parties and

admitted into the record, and witnesses testified on behalf of both parties. The ALJ also allowed both parties to submit post-hearing memoranda before issuing a decision. The record does not reveal any prejudice or error in the administrative hearing proceeding.

Mr. Ledet's main argument on appeal is that the ALJ erroneously concluded that Mr. Ledet was properly classified as a Tier II sex offender. Mr. Ledet maintains that the comparable Louisiana law (pornography involving juveniles) is not equivalent to his conviction for the federal crime of sexual exploitation of minors (by possessing child pornography), because the victim's ages are different in each statute. Under the federal law, a minor is any person under the age of 18 years (18 USCA 2256(1)), whereas under the Louisiana pornography involving juveniles statute, the victim is any person under the age of 17 years (La. R.S. 14:81.1(B)(8)). Mr. Ledet suggests that because the federal bill of information charging him with one count of possession of child pornography does not establish the age of the victim, his guilty plea does not equate to the Louisiana law concerning pornography involving juveniles. However, considering that both the federal law and Louisiana law have a common legislative purpose of protecting against the exploitation of children and the protection of minors from criminal sexual conduct that has been visually depicted, we find no merit to Mr. Ledet's argument that the statutes are not comparable. See La. R.S. 15:540 (general purpose behind registration requirements for sex offenders and child predators). See also State v.

Watts, 2009-0912 (La. App. 4th Cir. 6/16/10), 41 So.3d 625,636, writ denied, 2010-1685 (La. 1/28/11), 56 So.3d 966. Additionally, a clear reading of La. R.S. 15:540(A), La. R.S. 15:541(24)(a), and La. R.S. 15:541(25)(d) considered together, reflects that the terms "sex offense" and "sex offender" apply to all defendants convicted of one of the enumerated offenses against a victim who is a minor that require registration *regardless* of the age of the victim. This interpretation is further supported by the jurisprudence. See State v. Mueller, 2010-0710 (La. App. 4th Cir. 12/8/10), 53 So.3d 677, 683. We also note that the Louisiana statute regarding pornography involving juveniles specifically states that "[l]ack of knowledge of the juvenile's age shall not be a defense." La. R.S. 14:81.1(D)(l).

Mr. Ledet's final argument is that the ALJ erroneously found that no tier classification had ever been made until Mr. Ledet was re-classified by the Bureau in August of 2014. The Louisiana Legislature amended the statutory sex offender Registry scheme to increase the baseline registration periods through 2007 La. Acts, No. 460 § 2, effective January 1, 2008. The Louisiana Supreme Court has held that retroactive application of the new registration periods do not impose punishment and, therefore, do not violate state and federal *ex post facto* laws. See State v. Billiot, 2012-0174 (La. App. 1st Cir. 9/21/12), 104 So.3d 113, 117 (citing State ex rel. Olivieri v. State, 2000-0172 (La. 2/21/01), 779 So.2d 735, cert. denied, 533 U.S. 936, 121 S.Ct. 2566, 150 L.Ed.2d 730, and 534 U.S. 892, 122 S.Ct. 208, 151

L.Ed.2d 148 (2001)). Instead, the registration of sex offenders is merely a civil regulatory framework. **Billiot**, 104 So.3d at 117. Thus, the period of time a sex offender is obligated to register may be extended during the time of the original registration period. *Id.* Mr. Ledet's classification that was made by the Bureau in August of 2014 occurred during his original registration period. Accordingly, the ALJ was not arbitrary and capricious in affirming the Bureau's imposition of a Tier II classification for Mr. Ledet in 2014 when the Bureau became aware that Mr. Ledet was improperly classified under current law.

CONCLUSION

After reviewing this matter pursuant to the APA standards, we conclude that the Bureau's determination that Mr. Ledet was a Tier II sex offender residing in Louisiana was not manifestly erroneous nor arbitrary and capricious. Because the comparable sexual offense in Louisiana equated to possession of pornography involving minors, Mr. Ledet is required to register for 25 years pursuant to La. R.S. 15:544(B)(l). Thus, the district court did not err in affirming the ALJ's affirmation of the Bureau's determination. The March 28, 2018 amended judgment of the district court is affirmed. Costs of this appeal are assessed to Michael Ledet.

AFFIRMED.

APPENDIX D

**THE SUPREME COURT OF THE
STATE OF LOUISIANA**

MICHAEL LEDET

2018-C-1751

VS.

LOUISIANA DEPARTMENT OF
PUBLIC SAFETY AND CORRECTIONS

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IN RE: Michael Ledet- Plaintiff; Applying for
Writ of Certiorari and/or Review, Parish of E. Baton
Rouge, 19th Judicial District Court, No. 645,873, to the
Court of Appeal, First Circuit, No. 2017 CA 1457;

- - - - -

January 28, 2019

Denied

JLW
BJJ
GGG
MRC
SJC
JTG

HUGHES, J., would grant.